After viewing the facts and the law I hold that the defendant succeeds in his application and in the event I grant the order in terms of his application. The writ of summons and the statement of claim are therefore struck out. Costs to the defendant.

TUNG LIAN ENTERPRISE

v.

POLY TRADING COMPANY

HIGH COURT, TAIPING
DATO' HJ. ABDUL MALIK BIN HJ. ISHAK JC
[CIVIL APPEAL NO: 12-19-92 (92)]
14 SEPTEMBER 1993

PRACTICE & PROCEDURE: Jurisdiction - Transfer of proceedings - Claim for goods sold and delivered - Breach of contract - Plaintiff filed action at Sessions Court Taiping - Defendant's application to transfer proceedings to Sessions Court Kuala Lumpur dismissed by Sessions Court Taiping - Appeal to High Court - Subordinate Courts Act 1948 - Section 99A, s. 2 of 3rd Schedule.

This was an appeal against the decision of the Sessions Court Taiping which dismissed the application of the defendant/appellant to transfer the proceedings from the Sessions Court Taiping to the Sessions Court Kuala Lumpur.

Held:

[1] A liberal approach should be adopted in construing s. 2 of the 3rd Schedule. The Court should lean in favour of the appellant when applying s. 2 of the 3rd Schedule and not resort to a strict, rigid and dogmatic approach as was done by the trial Court.

[2] The words in s. 2 of the 3rd Schedule are clear and unambiguous and this Court must give effect to them whatever may be the consequences.

[3] This Court shall give effect to s. 2 of the 3rd Schedule in favour of the appellant. The case was ordered to be transferred to the Sessions Court, Kuala Lumpur forthwith.

[Appeal allowed with costs].

Case referred to:

Duport Steel Ltd. v. Sirs [1980] 1 All ER 529 ***(foll)***
Warburton v. Loveland [1832] 2 D & Cl (HL) 480, 489 6 ER 806) ***(refd)***
King Emperor v. Bensari Lal Sarma [1945] 72 IA 57, 70 ***(refd)***

Legislation referred to:

Subordinate Courts Act 1948, s. 99A, s. 2 of the 3rd Schedule

For the plaintiff - Bernard Poi; M/s. Poi Tzse Meng & Co.
For the defendant - P. Awtar Singh; M/s. Anis, Mohd. Ismail & Co.

JUDGMENT

Abdul Malik bin Hj. Ishak JC:
This is an appeal against the decision of the learned Sessions Court Judge, Taiping, Perak ("the trial Court") in dismissing with costs the application of the appellant (the defendant before the trial Court) to transfer the case from the Sessions Court, Taiping, Perak, to the Sessions Court, Kuala Lumpur.

The respondent (the plaintiff before the trial Court) filed an action in the Sessions Court, Taiping, Perak against the appellant to recover the sum of RM47,304.20 sen for goods sold and delivered. From the affidavit of Lim Lian Sim, the sole proprietor of the appellant's company, affirmed on 2 March 1992, it was averred that the respondent supplied and delivered the goods to the appellant at No: 64C, Jalan Desa Bakti, Taman Desa, Jalan Kelang Lama, 58100 Kuala Lumpur.

The respondent through Ang Poh Tit, the registered proprietor of the respondent's company, affirmed an affidavit dated 22 April 1992. It was averred in Ang Poh Tit's affidavit that the contract was entered into in Taiping, Perak and initial payment of RM1,880 was also made in Taiping, Perak by the appellant. It was further averred that the appellant had filed his application to transfer the civil action to the Sessions Court, Kuala Lumpur in a move calculated to delay and protract the respondent's claim.

The facts are fairly simple. The civil action was instituted in Taiping, Perak in respect of goods sold and delivered in Kuala Lumpur. Should the suit he heard in Taiping, Perak where it was filed or in Kuala Lumpur where the appellant resides and carries on his business and where the cause of action arose?

Section 99A of the Subordinate Courts Act 1948 ("SCA") sets out the further powers and jurisdiction of the Sessions Court as can be found in s. 2 of the Third Schedule. For convenience, s. 99A of the "SCA" is reproduced below:

> 99A. In amplication and not in derogation of the powers conferred by this Act or inherent in any Court, and without prejudice to the generality of any such powers, every Sessions Court and Magistrates' Court shall have the further powers and jurisdiction set out in the Third Schedule.

Again, for convenience, s. 2 of the Third Schedule is reproduced below:

> 2. Power to stay proceedings unless they have been instituted in the District in which -
>
> (a) the cause of action arose, or
> (b) the defendant resides or has his place of business, or
> (c) one of several defendants resides or has his place of business, or
> (d) the facts on which the proceedings are based exist or are alleged to have occurred, or
> (e) for other reasons it is desirable in the interests of justice that the proceedings should be had.
>
> (2) (Omitted).
>
> 3(1) (Repealed).
>
> (2) Power, on application or of its own motion, to transfer any proceedings to another Court of co-ordinate jurisdiction.

A liberal approach should be adopted in construing s. 2 of the Third Schedule. The Court should lean in favour of the appellant when applying s. 2 of the Third Schedule and not resort to a strict, rigid and dogmatic approach as was done by the trial Court.

In this appeal, Counsel for the appellant attacked the decision of the trial Court, particularly on the trial Court's finding that it (trial Court) has jurisdiction to stay proceedings but not to transfer the case to Kuala Lumpur. An injustice has been occasioned here and such manifest injustice cannot be allowed to remain uncorrected.

In my judgment, the words in s. 2 of the Third Schedule are clear and unambiguous and this Court must give effect to them whatever may be the consequences (see the speech of Lord Scarman in *Duport Steel Ltd. v. Sirs* [1980] 1 All ER 529 to the following effect: "... in the field of statute law the Judge must be obedient to the will of Parliament as expressed in its enactment. In this field Parliament makes and unmakes the law and the Judge's duty is to interpret and to apply the law, not to change it to meet the Judge's idea of what justice requires. Interpretation does, of course, imply in the interpreter a power of choice where differing constructions

are possible. But our law requires the Judge to choose the construction which in his judgment best meets the legislative purpose of the enactment. If the result be unjust but inevitable, the Judge may say so and invite Parliament to reconsider its provision. But he must not deny the statute. Unpalatable statute law may not be disregarded or rejected, merely because it is unpalatable.") It has also been said that the words of the statute speak the intention of the legislature (see *Warburton v. Loveland* [1832] 2 D & CL (H.L) 480, 489; 6 ER 806). In an appeal from India, Viscount Simon LC in delivering the advice of the Privy Council in *King Emperor v. Bensari Lal Sarma* [1945] 72 IA 57, 70 said:

> Again and again this Board has insisted that in construing enacted words we are not concerned with the policy involved or with the results, injuries or otherwise, which may follow from giving effect to the language used.

This Court shall give effect to s. 2 of the Third Schedule in favour of the appellant. The case is to be transferred to the Sessions Court, Kuala Lumpur forthwith.

The appeal is allowed with costs.

Appeal allowed.

UNITED OVERSEAS BANK LTD.

v.

HEAP HUAT RUBBER CO. SDN. BHD.

HIGH COURT, JOHOR BAHRU
DATO' JAMES FOONG J.
[CIVIL SUIT NO. 22-206 OF 1991]
27 JUNE 1993

PRACTICE & PROCEDURE: Application for amendment of statement of defence - Whether application was bona fide - Whether proposed amendments would change character of suit from one to that of another.

The plaintiffs obtained summary judgment against the defendants before the Senior Assistant Registrar and the defendants appealed. The defendants then applied for amendment of the statement of defence and counterclaim. The plaintiffs contended that the application was not *bona fide* and alleged that it was done with the purpose of improving the defendants position at the hearing of the appeal against the Senior Assistant Registrar's decision for summary judgment.

The plaintiffs further contended that the proposed amendments would change the character of the suit from one to that of another. The defendants on the other hand submitted that the proposed amendments were mainly amplificatory and explanatory in nature to those facts which were already in existence and as contained in the statement of defence.

Held:

[1] An appeal from the decision of the Senior Assistant Registrar to the Judge in Chambers is by way of a re-hearing and such being the case the trial Judge would be considering all matters virtually afersh. As such applications for amendments at this stage should be allowed.

[2] The proposed paragraph 2A of the statement of defence brings in illegality relating to enforcement contrary to public policy in Singapore and of defrauding the Public Administration of Singapore. The issue of illegality has no relationship to paragraph 2 of the statement of defence being of a completely new character and to allow the amendment would in effect turn this suit which is of one character into that of another and inconsistent character.

[3] The proposed paragraph 2B is not only new but in direct contradiction to paragraph 2 of the statement of defence. This direct conflict not